

# Agenda Item #14

## BEFORE THE NATURAL RESOURCES COMMISSION OF THE STATE OF INDIANA

IN THE MATTER OF:	)	
	)	
AMENDMENT TO 312 IAC 9-11-14,	)	Administrative Cause
GOVERNING WILD ANIMAL	)	Number: 02-154D
POSSESSION PERMITS	)	
	)	LSA Document #02-322(F)

### REPORT OF PUBLIC HEARING, ANALYSIS, AND RECOMMENDATION FOR FINAL ADOPTION

#### 1. Report of Public Hearing

A public hearing was convened as scheduled on February 24, 2003, in the Indiana Government Center South, Room W272, Indianapolis, Indiana, to consider the proposed amendments to 312 IAC 9-11-4 that governs wild animal possession permits. The Notice of Intent to Adopt the rule was published in the December INDIANA REGISTER at 26 IR 814. Notice of the public hearing and the text of the proposed rule was published in the February 1, 2003, INDIANA REGISTER at 26 IR 1603. Notice of public hearing was published in the Indianapolis *Daily Star*, a newspaper of general circulation in Marion County, Indiana on January 27, 2003. A public hearing notice was also placed on the E-calendar of the Natural Resources Commission and the Department of Natural Resources. No one appeared for the public hearing.

#### 2. Analysis

The Alligator snapping turtle (*Macrolemys temmincki*) is listed as a threatened or endangered wild animal and subject to protection in Indiana (312 IAC 9-5-4). Previously, 312 IAC 9-2-7 (repealed June 2002) allowed for the possession of an endangered or threatened species "if the animal was lawfully obtained outside Indiana." An Indiana resident that had legally purchased alligator snapping turtles prior to January 1, 1998 outside of Indiana prompted the proposed amendment of 312 IAC 9-11-14. The resident obtained wild animal possession permits from the DNR for the turtles.

Existing language within 312 IAC 9-11-14(c) prohibits the use of a wild animal in the following manners:

- (1) [f]or commercial purposes, unless the person is issued a commercial license by the United States Department of Agriculture.
- (2) ...
- (3) As a public display.

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To comply with 312 IAC 9-11-14(c), a person must also obtain a commercial license by the USDA. However, an USDA license is issued only for wild animals that are covered under the Animal Welfare Act (7 U.S.C. §2131). By definition, animals covered under the Animal Welfare Act are limited to those that are warm-blooded. There is no USDA license for the use of reptiles, because they are cold-blooded. In essence, no federal commercial license exists for the use of an alligator snapping turtle.

Since there is no USDA license for the use of alligator snapping turtles, the resident petitioned the Indiana General Assembly's Natural Resources Study Committee for possible amendment of section 14 to include an allowance for commercial use and public display of alligator snapping turtles. The Study Committee requested the Division of Fish and Wildlife to review the resident's request.

The Division of Fish and Wildlife proposed the amendment to 312 IAC 9-11-14(c) that would allow for the possession of an alligator snapping turtle lawfully acquired prior to January 1, 1998, to be used for commercial purposes or for public display. The Advisory Council recommended preliminary adoption; and subsequently, the Commission gave preliminary adoption to the rule amendment at its November 2002 meeting.

### 3. Written Comments

Rusty Reed, Churubusco, Indiana, filed written comments on February 13, 2003, which state, in part:

I would like to support the Indiana Department of Natural Resources in their decision to change 312 IAC 9-11-14 subsection C(1) to allow Alligator Snapping Turtles lawfully acquired prior to January 1, 1998 to be used for commercial purposes. I feel this change is necessary and will allow educational exhibits to exist and therefore help to conserve the species.

### 4. Recommendation

The proposed rule is recommended for final adoption as attached as Exhibit A.

Date: March 3, 2003

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Jennifer M. Kane  
Hearing Officer

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Exhibit A

## TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #02-322(F)

### DIGEST

Amends 312 IAC 9-11-4, that governs wild animal possession permits, to allow an alligator snapping turtle, lawfully acquired prior to January 1, 1998, to be used for commercial purposes or for public display. Effective 30 days after filing with the secretary of state.

#### 312 IAC 9-11-14

SECTION 1. 312 IAC 9-11-14 IS AMENDED TO READ AS FOLLOWS:

#### **312 IAC 9-11-14 Maintaining a wild animal possessed under this rule**

**Authority: IC 14-22-26**

**Affected: IC 14-22**

Sec. 14. (a) A person must not maintain a wild animal in a manner ~~which~~ **that** does any of the following:

- (1) Poses a hazard to public safety.
- (2) Poses a hazard to property of a person other than the permittee.
- (3) Harms the health of the wild animal.
- (4) Violates this article or the license under which the animal is possessed.

(b) A person must not possess a wild animal in a condition ~~which~~ **that** is any of the following:

- (1) Unsafe.
- (2) Unsanitary.
- (3) Constitutes maltreatment or neglect of the animal.
- (4) Allows the escape of the animal.

(c) A person must not use a wild animal in any of the following manners:

- (1) For a commercial purpose, unless the person is issued a commercial license by the United States Department of Agriculture **or the wild animal is an alligator snapping turtle (*Macrolemys temmincki*) lawfully acquired by the applicant prior to January 1, 1998.**
- (2) For a sporting purpose.
- (3) As a public display.

(d) If a Class II or Class III wild animal is used for an educational purpose, the animal must be confined in a cage that prevents contact with the public.

(e) A wild animal must be provided with fresh drinking water in clean containers on a daily basis.

(f) A swimming pool or wading pool, which is provided for the use of a wild animal, must be cleaned as needed to maintain good water quality.

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(g) Surface water must be adequately drained from a cage or enclosure where a wild animal is possessed.

(h) A wild animal must be provided with food ~~which~~ **that** is each of the following:

- (1) Unspoiled.
- (2) Uncontaminated.
- (3) Appropriate to the dietary needs of the animal.

(i) Fecal wastes and food wastes must be removed daily from cages and stored or disposed to prevent noxious odors and insect pests. Hard floors shall be scrubbed and disinfected weekly. Large pens and paddocks with dirt floors shall be raked at least once every three (3) days and the waste removed. (*Natural Resources Commission; 312 IAC 9-11-14; filed May 12, 1997, 10:00 a.m.:20 IR 2743*)